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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-204619

DATE: June 21, 1982

MATTER OF: J.V.F. Incorporated

DIGEST:

Where agency's concerns about the protester's proposal were communicated to the protester during written and oral discussions; those concerns bore a reasonable and logical relationship to the evaluation criteria stated in the RFP; and the record shows that the evaluation of the proposal was not arbitrary, GAO will not object to the agency's rejection of the protester's proposal.

J.V.F., Incorporated protests the rejection of its proposal as technically unacceptable under request for proposals (RFP) No. EMW-R-0537, issued by the Federal Emergency Management Agency (FEMA) to procure the management services needed for developing sites and setting up mobile homes during major disasters and emergencies. We deny the protest for the reasons stated below.

At the outset, we note that J.V.F. did not accept the opportunity for a debriefing by FEMA prior to when J.V.F. filed its protest with our office. J.V.F.'s initial protest, therefore, in some respects was based upon inaccurate assumptions of fact. Once the protest was filed, a debriefing was not held and the agency confined itself to responding to the protest in a report to our Office. FEMA did not release to the protester a number of documents attached to the report, such as the abstract of proposals, the score sheets of the members of the agency's technical evaluation panel, the reports of the panel, and the summary of negotiations with the successful offerors. Under these circumstances, J.V.F. necessarily had to comment upon the contracting officer's summarization of these documents rather than

the documents themselves. We do not suggest that the lack of a debriefing or the withholding of documents from J.V.F. was improper, but it is apparent from the protest that these circumstances did create some misunderstandings which in part resulted in this protest.

FEMA provides mobile homes to victims of floods, earthquakes, and other similar Presidentially-declared major disasters when these victims are displaced from their homes and other existing local housing is inadequate. Of course, it cannot be predicted when, where or how many of these mobile homes may be needed; whether ready-to-use pads will be available in nearby mobile home parks; whether sites will have to be constructed; or whether the situation would result in the homes being clustered at a single location or widely dispersed.

FEMA transports the Government-owned mobile homes from a storage area to a staging area close to the scene of the disaster; it then becomes the contractor's responsibility to deploy the homes. RFP -0537 was issued to obtain the management services necessary to set up the mobile homes and to develop sites, if necessary. According to the RFP's Statement of Work, the contractor's functions include: (1) pre-operations planning (assuring compliance with State and local codes, permit and license requirements, and providing architect-engineer services); (2) determining what sites are feasible; (3) arranging with utility companies for the provision of electricity, heating, fuel, water and sewer service; (4) subcontracting for (a) construction of mobile home sites, (b) transportation of homes to the sites, (c) construction of water wells and septic systems (with FEMA approval), and (d) mobile home set-up; (5) establishing and maintaining a control and reporting system which allows the contractor and FEMA to monitor the progress of the operation; and (6) participating in the close-out of the operation.

Each offeror was required to submit a technical and a cost proposal, the general structure and content of which were prescribed by Attachments C and D to the RFP. Attachment C, "Proposal Instructions and Conditions," is a preprinted form apparently used by FEMA for management-type contracts; it includes an outline of the topics which must be addressed and the type of information which the agency was seeking.

With respect to the technical proposals, Attachment C sought a discussion of several topics which centered around how the contractor would manage the project. Under the headings "technical approach," "technical management" and "tasks and methods," for example, offerors were asked to describe the method by which they proposed to solve technical problems, including "valid and practical" solutions to those problems; to describe how they would assure that troublesome issues would surface timely and at an appropriate level; to give their perception of the principal tasks to be accomplished, how those tasks related to each other and what considerations the offeror would take into account in scheduling their performance; to state what methods the offeror would use for personnel training, field personnel recruitment and for project control in order to assure timely, professional and timely performance; and to explain the offeror's plans for project management.

Under section 3 of Attachment C, "Organization and Work Power," offerors were to provide an organizational chart including the names of key personnel and their resumes demonstrating any special qualifications applicable to the performance of the project; a statement of the amount of time key personnel would devote to the contract; and the arrangements, if any, made with consultants, advisors or subcontractors. Finally, section 4 requested an account of the offeror's experience and past performance.

Attachment D to the RFP contained additional proposal instructions particularly applicable to this contract. The questions asked in this attachment sought even more detailed information about the extent and quality of the offeror's prior performance and the identity, qualifications and availability of the offeror's key personnel. In addition, Attachment D included scenarios of two hypothetical disasters, in one of which there was a need for 500 mobile homes ("major scenario") and in the other, 35 ("minor scenario"). Each offeror was to outline, with reference to its own capabilities, how it would respond to these situations and describe "the key tasks to be performed, staffing and supervision; timing, how subcontracting would be performed and subcontractors paid, production monitoring provisions for quality control and assuring compliance with the specifications, and reporting to the FEMA project officer."

Attachments C and D, therefore, incorporate three basic mechanisms through which a contractor's management capability could be evaluated: (1) an explanation by the offeror of the technical and managerial problems it perceives in a project of this type and its approach for solving them, both as discussed in a general narrative and as evidenced by its reaction to the major and minor scenarios; (2) a description of the key personnel who would work on this project, their qualifications and availability; and (3) an account of the offeror's organizational experience and the quality of its prior performance.

All of these provisions of the RFP make it clear that FEMA was seeking contractors capable of managing a project of this nature from start to finish. Although the contract was under the general supervision of the agency and some specific tasks--such as constructing wells and septic systems--required FEMA's prior approval, for the most part it was the contractor's responsibility to coordinate and perform all the tasks necessary to provide temporary housing under emergency conditions.

In the RFP, FEMA advised offerors that the agency contemplated the award of several indefinite quantity contracts which, in the event of an emergency, would be implemented by the issuance of cost-plus-fixed-fee task orders.

The criteria for evaluating proposals were explained as follows in the RFP's Attachment B, "Factors for Award":

"It is the Government's intention to award one or more contracts through competitive negotiations to the Offerors whose proposals are considered most advantageous considering the below listed criteria, cost and other factors. The technical criterion is considered of greatest importance. Cost is the least important factor. The Government reserves the right to award contracts to other than the low offerors. Evaluation and award will be based upon information in the proposals and data from Government and other sources.

"Technical Evaluation Criteria. The following factors will be applied to the technical proposals and will result in a numerical score. The relative importance of each factor is set forth below:

1. Personnel: (60 points)
 - a. Key Personnel Office (max. points per item, 5; max. points, 30):
 - (1) Project Management experience
 - (2) Availability
 - (3) Demonstrated ability to perform in a crisis situation and respond to strict time constraints (demonstrated through discussions of actual job experience)

- (4) Individual's supervisory experience in building trades, and/or experience in building construction inspection.
 - (5) Demonstrated ability to deal with the public.
 - (6) Prior experience and/or demonstrated understanding of Mobile Home set-up and site development to be performed.
- b. Field Personnel (max. point per item, 6; max. total points, 30):
- (1) Individual technical experience in building trades, and/or experience in building construction.
 - (2) Demonstrated ability to perform in a crisis situation and respond to strict time constraints (demonstrate through statement to actual job experience)
 - (3) Availability
 - (4) Demonstrated ability to deal with the public
 - (5) Prior experience and/or demonstrated understanding of Mobile Home set-up and site development to be performed.

2. Organization Qualifications: (40 points)

- a. Prior relevant experience with, and/or demonstrated understanding of organizational structure and response approach as based on information provided re the "hypothetical disaster" scenario outlined in Attachment D. (10 points).
- b. Prior relevant experience in providing technical services similar to those required under this solicitation. (10 points)
- c. Prior experience in management and coordination of large dollar contracts and/or contracts of a highly technical nature. (10 points)
- d. Major Scenario (5 Points)
Minor Scenario (4 Points)"

Thirteen firms submitted timely proposals in response to the RFP. The FEMA technical evaluation panel categorized five of the proposals as "technically unacceptable," the other eight, including J.V.F.'s, were "technically unacceptable but can be made acceptable" and within the competitive range. Oral discussions were conducted with each offeror in the competitive range, at the close of which each offeror was provided with a letter listing the highlights of the discussions and inviting any necessary changes to the offeror's proposal as a result of questions raised during discussions.

As J.V.F. notes, the contracting officer's letter to it advised that " * * * your proposal is in the competitive range. It is tentatively acceptable pending oral discussions." The list of highlights of the oral discussions provided to J.V.F. was as follows:

- "1. How will authority be delegated?
2. What are the lines of authority?
3. How will Sub-contracting management work? How do you propose to procure sub-contracts?
4. Outline procedures to be followed in meeting program objectives.
5. What is your plan for staffing and training if WAEs are not available?
6. How will fiscal processing work?
7. How do you plan to consider Minorities?
8. What is your understanding of ARTICLE I B, Issuance of Cost Plus Fixed Fee Task Orders in the proposed contract?
9. How do you plan on addressing use of Minorities?
10. What are your capabilities for performance outside the Continental U.S.?"

These questions reflected the technical evaluation panel's major concern, which was that J.V.F. had inadequately described how it proposed to manage the operation. In response to these questions, J.V.F. provided short, broadly-worded replies which in FEMA's view did not always meaningfully address its inquiries.

After reviewing J.V.F.'s response, the technical evaluation panel did not change its rating of J.V.F.'s proposal, which remained technically unacceptable. By letter of July 15, 1981, the contracting officer notified J.V.F. that its proposal had been rejected, a decision which J.V.F. asked the contracting officer to reconsider. This appeal was denied by the contracting officer on August 24, 1981, upon receipt of which the firm protested to our Office.

In its initial letter of protest to our Office, J.V.F. stated two grounds for protest. The first was that the RFP's "Factors for Award" and their relative importance were not being adhered to by FEMA in its selection of contractors.

In support of this position, the protester refers to the contracting officer's letter of July 15, in which he advised the firm that its proposal had been rejected because

" * * * your revised proposal did not demonstrate an adequate technical or management approach. Methods of project control were not properly addressed and there was a lack of demonstrated understanding of the scope of work."

J.V.F. argues that these deficiencies, at most, should have had a value of 20 points; therefore, its technical evaluation score should have been 80 or better. Since it understood that firms scoring less than 80 had been selected for further negotiations, J.V.F. suggests that FEMA passed it over in favor of lower-scoring firms.

This contention by J.V.F. is not supported by the record. The technical evaluation panel, using pre-printed worksheets which mirrored the RFP's "Factors for Award," awarded J.V.F.'s initial proposal a score of less than 80 and the panel did not revise that score after reviewing the firm's response to the oral discussions. The firms later selected for award scored higher than J.V.F.

In making this contention, we note that J.V.F. tried to reconstruct its entire score based on the contracting officer's letter of July 15, in which he notified the firm that it had been eliminated from the competitive range. However, we do not think this letter was intended to serve as a complete discussion of the reasons for the agency's action. It was a short, three-paragraph letter whose principal purpose was to advise J.V.F. that it had been eliminated from the competitive range and that the firm could request a debriefing after award. Although the rationale given in the letter as to why J.V.F. was eliminated was taken from the technical evaluation panel's comments, and indicated in a very general way the panel's concerns, it did not convey them in their entirety.

The second ground for protest was that the reasons stated by FEMA for rejecting J.V.F.'s proposal were "arbitrary" and bore "no relationship" to the "Factors for Award." In support of this contention, J.V.F. compares the contracting officer's letter of July 15, which we have quoted above, to his later letter of August 24, in which he denied J.V.F.'s "appeal" of its exclusion from the competitive range. In his second letter, the contracting officer stated:

"According to the TEP [technical evaluation panel] evaluation of your written responses the original questions still remain substantially unanswered. The general concept of responding in broad terms to the questions did not dispel any of those original concerns. As an example, your response to the first question, in which you indicate that in the pre-operations planning phase the project

phase the project manager will determine who will coordinate what management functions and be given sole authority and responsibility for that function and its staffing does not provide the TEP with much confidence that:

- a. There is a proper understanding of the types of functions to be managed, or
- b. They will know what happens when a conflict occurs between functional managers when they select the same individual for their staff, or
- c. There are personnel under your employ or available to you with appropriate qualifications to manage a particular function, or
- d. There is some existing procedure which specifies the activities which fall into each functional area.

Of course other similar questions arise with respect to subcontracting management.

In general the TEP does not consider that the responses to the questions were adequate to consider the proposal as acceptable."

J.V.F. interprets subparagraph c. of this letter as criticizing its personnel as unqualified, which it finds inconsistent with the selection of Brothers Specifications Inc. for further negotiations, since according to J.V.F. "many" of its "key personnel" made their resumes "available" to other contractors including Brothers. We understand J.V.F.'s perception to be that the agency found its proposal "unacceptable" and Brothers' "acceptable" even though both proposed the use of certain key personnel in common.

As in the case of his earlier letter, we do not think the contracting officer was attempting to comprehensively set forth all the technical evaluation panel's concerns; he provided an "example" of the panel's dissatisfaction with the broadly-worded answers J.V.F. provided after the oral discussions. We note that again, in this letter, the contracting officer mentioned the possibility of a debriefing, which if it had been requested by J.V.F., may have provided that firm a better understanding of the deficiencies the agency perceived in its proposal.

Moreover, we think J.V.F. has misinterpreted the contracting officer's letter of August 24. As we indicated above, the technical evaluation panel's principal concern after reading J.V.F.'s initial proposal was that it was unclear how J.V.F. would manage the operation. Under the first question listed in the highlights of the oral discussions, the firm was to describe how it planned to delegate authority. J.V.F.'s response, in its entirety, was:

"During the pre-operations planning phase a determination will be made by the project manager as to who will coordinate what management function and be given sole authority and responsibility for that function as well as staffing for that particular function from the list of available personnel."

The thrust of subparagraph c. in the contracting officer's August 24 letter was not so much that particular individuals lacked qualifications, but that this response by J.V.F. was so broadly worded that it gave no assurance that J.V.F. would select individuals qualified to manage a particular function.

In response to FEMA's report to our Office, J.V.F. disputes the correctness of certain facts as presented by the agency.

In its report, FEMA stated that J.V.F. had been told that its initial proposal was "considered technically unacceptable but susceptible to being made acceptable." J.V.F. states that is in error because it was actually advised that its proposal was "tentatively acceptable pending oral discussions."

The record is inconclusive on this point: a memorandum to the file by FEMA's contract specialist states that at the oral discussions each offeror was told that its proposal was "technically unacceptable but susceptible to being made acceptable." J.V.F. disputes this and notes that the same person characterized J.V.F.'s proposal as "tentatively acceptable pending oral discussions" in his letter to the company transmitting the questions highlighted during oral discussions.

While the language differs, we see no practical distinction between the two phrases. Both convey the sense that the proposal so labeled is considered marginal and that the questions raised during oral discussions had to be answered satisfactorily before a proposal was acceptable. Even if we accept J.V.F.'s version of what it was told, we do not believe the company was prejudiced.

Next, J.V.F. observes that in his report to our Office, the contracting officer states that six "general topics" were discussed with all offerors. This list of "general topics" compares as follows with the list of "highlights" of the oral discussions provided to J.V.F. at the close of discussions:

<u>"General Topics"</u>	<u>"Highlights"</u>
a. How authority would be delegated.	1. How will authority be delegated?
b. What specific contract management do you have?	2. What are the lines of authority?
c. What specific experience do you have regarding award of contracts?	3. How will Sub-contracting management work? How do you propose to procure sub-contracts?
d. How do you plan on handling minority considerations?	4. Outline procedures to be followed in meeting program objectives.

"General Topics"
(continued)

"Highlights"
(continued)

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| <p>e. What capabilities do you have in utilizing and/or developing a management information system?</p> <p>f. Capabilities outside the Continental U.S.</p> | <p>5. What is your plan for staffing and training if WAEs are not available?</p> <p>6. How will fiscal processing work?</p> <p>7. How do you plan to consider Minorities?</p> <p>8. What is your understanding of ARTICLE I B, Issuance of Cost Plus Fix Fee Task Orders in the proposed Contract?</p> <p>9. How do you plan on addressing use of Minorities?</p> <p>10. What are your capabilities for performance outside the Continental U.S.?</p> |
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J.V.F. asserts that contrary to the contracting officer's report to our Office, "general topics" b., c. and e. were not discussed with it, as evidenced by the fact that they do not appear among the "highlights" of the oral discussions.

It appears to us that in his report to our Office the contracting officer may have attempted to summarize the discussions to such an extent that they do not "track" the list of highlights given J.V.F. Absent any context, for example, it is difficult to understand what was meant by topic b., "What specific contract management do you have?" On the other hand, the list of highlights given J.V.F. include a number of management concerns. In the same vein, "general topic" c. could be but another way of restating the concerns reflected in question 3 of the highlights. In other words, the differences J.V.F. perceives may simply be different ways of referring to the same general concerns.

Moreover, what is relevant is not how the contracting officer summarized the discussions in his report to our Office but what actually occurred in the evaluation. The documents accompanying the report show that the technical evaluation panel re-evaluated the proposals in light of the oral discussions and J.V.F.'s answers to the

list of "highlights" provided to it. We do not think the record supports the conclusion that J.V.F. was asked to respond to one set of questions but evaluated on another.

Next, J.V.F. asserts that although the contracting officer indicates that J.V.F.'s "organizational qualifications" were not addressed sufficiently in its initial or revised proposal, during oral discussions no questions were asked about the firm's "organizational qualifications." J.V.F. suggests that in this regard its proposal was downgraded on the basis of questions which it was never asked.

"Organizational qualifications" accounted for 40 out of the maximum of 100 points which could be given a proposal under the RFP's "Factors for Award." This factor was sub-divided into four 10-point categories, under one of which the offeror was to demonstrate its understanding of organizational structure and a response approach based upon the information provided about the two hypothetical disasters. In describing how it would respond to these disasters, each offeror was to address, based on its actual capabilities, "key tasks to be performed, staffing and supervision, timing, how subcontracting would be performed and subcontractors paid, production monitoring, provisions for quality control and assuring compliance with specifications, reporting to the FEMA project officer."

Concerns about an offeror's organizational qualifications could arise from its response to the scenarios; these concerns then would be reflected in questions asked during oral discussions. Although J.V.F. states that the only questions it was asked about its "organizational qualifications" were those relating to delegation and lines of authority, that is not correct. The technical evaluation panel's notes indicate that of the "highlight" questions asked of J.V.F., numbers 3,4,5,6 and 8 also related to its organizational qualifications.

J.V.F. suggests that it should have received a high scoring for its "organizational qualifications" because its "key personnel team" has over 100 man-years of management experience with similar operations. The technical evaluation panel recognized these individuals' experience, but it also noted that J.V.F.'s experience as an organization was limited. We cannot say this conclusion was unreasonable. In its proposal, J.V.F. stated that it specializes in residential and commercial real estate inspections and appraisals; that it had been in existence for 10 months prior to submitting the proposal; that it had performed one major contract, which was with FEMA and which was for verifying real and personal property losses in the Corpus Christi area following hurricane Allen; and that it anticipated receiving award of a FEMA stand-by contract for damage assessment inspections.

Finally, J.V.F. notes that in his report to our Office, the contracting officer states that one deficiency in J.V.F.'s proposal which related to evaluation factor 2.c. ("Prior experience in management and coordination of large dollar contracts and/or contracts of a highly technical nature") was that J.V.F. did not demonstrate how it would resolve a conflict between functional managers when they select the same person for their staffs. J.V.F. says that it was not informed that such a demonstration was a "required response" to evaluation factor 2.c. and therefore it did not address it in its proposal.

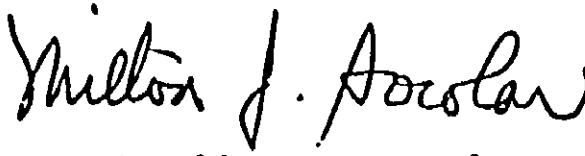
J.V.F. received only partial credit under evaluation factor 2.c. The consensus of the technical evaluation panel was that even though J.V.F. had proposed to employ individuals who were experienced in managing and coordinating contracts which were of large dollar value or highly technical, J.V.F. had not demonstrated that, as an organization, it possessed this kind of experience. This was the only written narrative comment by the technical evaluation panel which specifically was identified to evaluation factor 2.c. In view of the fact that at the time it submitted its proposal J.V.F. had been in existence for less than one year and had performed only one major contract, we cannot say the panel's assessment was arbitrary.

The panel's concern as to how J.V.F. would resolve the conflict which would result if two functional managers selected the same individual for their staffs stemmed from J.V.F.'s response to the question "How will authority be delegated?" We have quoted J.V.F.'s reply to this question on p. 11, infra.

From this reply it does appear that each functional manager would be given "sole authority and responsibility" for selecting a staff "from the list of available personnel," so that a conflict could arise if two managers chose the same person from the list. We cannot say, therefore, that this concern about J.V.F.'s proposal was unreasonable. Its relationship to factor 2.c. would appear to lie in the fact that a firm experienced in large dollar value or highly technical contracts would anticipate this problem and its solution. The fact that J.V.F. did not could reflect on its organizational experience.

We have held that although an agency is required to identify the major evaluation factors applicable to a procurement, it need not explicitly identify aspects that are logically and reasonably related to the stated factors. AAA Engineering and Drafting, Inc., B-204664, April 27, 1982, 82-1 CPD 387. For the reasons stated above, we do not believe that in its evaluation of J.V.F.'s proposal, FEMA went beyond concerns which were logically and reasonably related to the "Factors for Award" stated in the RFP.

The protest is denied.

for 
Comptroller General
of the United States